

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:HMT:CIN:1:POSTF-115821-02  
JEKagy

date: *April 22, 2002*

to: Carol Givens, Examination Team manager  
Attn: Robert Cozzarelli

from: RICHARD E. TROGOLO  
Associate Area Counsel  
(Large and Mid-Size Business)

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subject: [REDACTED] **Section 982 Request**

This memorandum responds to your request for assistance arising from our April 17, 2002 meeting in Columbus, Ohio. This memorandum should not be cited as precedent.

At our meeting, you described how [REDACTED] has been slow in responding to the examination team's IDR requests, especially those issued by International Examiner [REDACTED]. Prior to our meeting, as another step toward the securing from the taxpayer any documentation supporting the foreign tax credits claimed for direct, indirect and deemed paid taxes, [REDACTED] prepared (but has not issued) a Transmittal letter and a Formal Document Request Under § 982 (the "FDR" or the "982 Request"). At the meeting, you asked that we review the FDR and the Transmittal letter prior to their issuance.

We have completed our review of the documents submitted and have attached revised versions of the Transmittal letter and the FDR for your possible use. Initially, we note that since the amounts at issue are foreign tax credits, you may wish to merely deny the claimed credits due to the taxpayer's failure to substantiate its entitlement. However, since we view that decision as a management decision, not a legal decision, we leave to your better judgment whether to issue the Formal Document Request. Should you choose to pursue the taxpayer's documentation of the credits claimed through the issuance of the 982 Request, we believe that the attached revised Formal Document Request and the Transmittal letter (once properly addressed) comply with all Code and Manual provisions. We also believe that the FRD should be enforceable should the taxpayer seek to have the request quashed pursuant to section 982(c)(2). As we discussed at our meeting, the Transmittal should be sent by registered or certified mail, addressed to the taxpayer's most

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recent mailing address. You are encouraged to provide a hand delivered courtesy copy to the party from the taxpayer's Tax Department with whom you regularly deal.

Since the 982 Request affects only foreign based documents, we suggest that the issuance of the FDR be accompanied by the issuance of an administrative summons for the same documents. Through use of a summons, the Service can compel the production of the documents, should the documents turn out to be domestic based. Although the language describing the documents sought by the summons will be identical to the three numbered paragraphs in the attached revised FDR, we nonetheless recommend that you forward the draft summons to us for a quick review prior to the issuance of the summons and the 982 Request.

Please let us know if any questions remain regarding the issuance of the Formal Document Request, the transmittal letter or the administrative summons. You may reach me at [REDACTED].

#### DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

RICHARD E. TROGOLO  
Associate Area Counsel  
(Large and Mid-Size Business)

By: \_\_\_\_\_  
JAMES E. KAGY  
Special Litigation  
Assistant

Attachments:  
As stated.